IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929

Bail Appl..No. 3864 of 2007()

CRIME NO.33/2007 OF VILAPPILSALA POLICE STATION

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PETITIONERS/ACCUSED 1 & 2

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1. SHYJIMON, S/O RAJAN,
   AGED 19 YEARS, CHALUVILA PUTHEN VEEDU,
   PULIYARAKONAM, THIRUVANANTHAPURAM.

2. BYJUMON, S/O RAJAN,
   AGED 25 YEARS, CHALUVILA PUTHEN VEEDU,
   PULIYARAKONAM, THIRUVANANTHAPURAM.

BY ADV. SRI.S.GOPAKUMARAN NAIR
SRI.S.GOWTHAM

RESPONDENTS:

SUB INSPECTOR OF POLICE,
VILAPPILSALA POLICE STATION,
THIRUVANANTHAPURAM, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 27/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No. 3864 of 2007

Dated this the 27th day of June 2007

O R D E R

Application for anticipatory bail. The petitioners are accused 1 and 2. They face allegations inter alia under Sections 308 and 324 read with 34 I.P.C. The alleged occurrence took place on 19/2/2007 at about 8 a.m. The petitioners herein and two others allegedly attacked the defacto complainant causing serious injuries to him. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent of the allegations levelled against them. The defacto complainant is a very influential person. He has ensured that false allegations are raised against the petitioners. There is a prior animosity between the rival contestants and it is, in these circumstances, that such false allegations have been raised. It is prayed that directions under Section 438 Cr.P.C may be issued in favour of the petitioners.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the

injuries suffered by the victim show that the injuries are serious. Dangerous weapons have been used to signify the real nature of the culpable intention of the miscreants. One of them has already been arrested and enlarged on bail by the courts below. There are no circumstances justifying the invocation of the powers under Section 438 Cr.P.C in favour of the petitioners. The petitioners must also surrender before the learned Magistrate or the investigating officer and seek regular bail in the ordinary course, submits the learned Public Prosecutor.

4. I note that the petitioners approached the learned Sessions Judge with the prayer for anticipatory bail. The learned Sessions Judge, by the order dated 25/5/2007, had rejected the prayer for anticipatory bail.

5. The learned counsel for the petitioners particularly points out that the petitioners 1 and 2 were themselves injured and were at the hospital on 18/2/2007 and 19/2/2007 even prior to the alleged incident which had taken place at 8 a.m on 19/2/2007. To drive home this point, the petitioners place reliance on Annexures 2 and 3. They are wound certificates issued on 19/2/2007 and 18/2/2007 respectively. I have considered the nature of injuries which are described in those

certificates. By no stretch of imagination can it be held that, at this stage, Annexures 2 and 3 are sufficient to knock the bottom out of the prosecution case.

6. I shall scrupulously avoid any detailed discussion on merits about the acceptability of the allegations or the credibility of the data collected. Suffice it to say that I am not at all persuaded to agree that this is a fit case where directions under Section 438 Cr.P.C can or ought to be issued in favour of the petitioners. This, I am satisfied, is a fit case where the petitioners must resort to the ordinary and normal procedure of appearing before the investigating officer or the learned Magistrate having jurisdiction. They must then seek regular bail in the ordinary course.

7. In the result, this petition is dismissed. Needless to say, if the petitioners surrender before the investigating officer or the learned Magistrate and apply for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr // True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007